

24 SEP 1999



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In re Application of  
KUBSIK, Helmut J. et al  
U.S. Application No.: 08/765,584  
PCT No.: PCT/EP95/01985  
Int. Filing Date: 26 May 1995  
Priority Date: 20 June 1994  
Attorney's Docket No.: PORTO 12  
For: DETECTOR FOR A MEASURING  
DEVICE

DECISION ON  
PETITION  
UNDER 37 CFR 1.137(b)

This decision is in response to applicants' "Renewed Petition Under 37 CFR 1.181," filed 23 April 1999.

**BACKGROUND**

On 02 March 1999, a decision dismissing applicants' petition under 37 CFR 1.181 to withdraw the holding of abandonment for failure to receive an office action was mailed. Applicants were also notified that the English translation was not an accurate translation of the international application because of the addition of headings and changing the dependencies of claims 4-9 and 11-13.

On 23 April 1999, applicants filed the instant renewed petition requesting reconsideration of the petition and to convert to a petition to revive under 37 CFR 1.137(a), or, in the alternative, 37 CFR 1.137(b).

**DISCUSSION**

**Petition Under 37 CFR 1.137(a)**

A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the requisite petition fee; (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due

date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 1.20(d)) required pursuant to 37 CFR 1.137(c). Applicants have not satisfied any of the items.

Regarding item (1), a proper English translation is accepted as the proper response. A review of the application shows that the English translation submitted 16 May 1997 is defective because it differs from the international application as filed.

With regards to item (2), the requisite petition fee for a petition under 37 CFR 1.137(a) is \$110.00 (Fee Code 140). Applicants have not submitted a check to cover this fee, nor authorized the required fee to be charged to Counsel's Deposit Account. Applicants' statement that no additional petition fee is required is in error.

Concerning item (3), applicants have not provided any evidence showing that the delay in submitting an acceptable English translation was unavoidable.

Finally, regarding item (4), section 711.03(c) of the Manual of Patent Examining Procedure (MPEP) states that any application filed before 08 June 1995 must be accompanied by a terminal disclaimer and fee, dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Here, a terminal disclaimer and fee must be included since the application was filed on 26 May 1995.

Therefore, in view of the above facts the abandonment cannot be held at this time to be unavoidable.

#### **PETITION UNDER 37 CFR 1.137(b)**

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional delay must be accompanied by: (1) the required reply, unless previously filed; (2) the requisite petition fee; (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional (the Commissioner may require additional information where there is a question whether the delay was unintentional); and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). Applicants again have not satisfied any of the items.

Regarding item (1), a proper English translation is accepted as the proper response. As stated previously, the translation submitted is defective.

Concerning item (2), the requisite petition fee for a petition under 37 CFR 1.137(b) is \$1,210.00 (Fee Code 141). Applicants have not submitted a check to cover this fee, nor authorized the required fee to be charged to Counsel's Deposit Account.

With regards to item (3), a review of the application file reveals that applicants have not

provided the requisite statement "that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional."

Concerning, item (4), as stated above, applicants have not included a terminal disclaimer or fee.

Accordingly, applicants have not satisfied any of the requirements of 37 CFR 1.137(b).

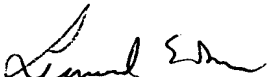
### **CONCLUSION**

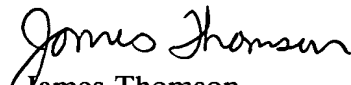
For the reasons above, the petitions under 37 CFR 1.137(a) and (b) are **DISMISSED** without prejudice. The application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137". The requisite petition fee is required.

A proper response must include a proper English translation of the international application as filed in accordance with 35 U.S.C. 371(c)(2) and 37 CFR 1.495(c)(1), and a check of \$130.00 for the processing fee as required by 37 CFR 1.492(f). There is no small entity reduction for this fee. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.

  
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